

Appl. No. : 09/813,775
Filed : March 20, 2001

CHEPO polypeptide from claims 34 and 35. The Office Action emphasized that this additional restriction requirement was not a species election.

The invention of Group II (claims 16-24, 30, and 34-41) drawn to a CHEPO polypeptide comprising or related to SEQ ID NO: 2, a variant of CHEPO polypeptide, a chimeric molecule comprising a CHEPO polypeptide fused to a heterologous amino acid sequence, or a composition comprising the CHEPO polypeptide fused to a heterologous amino acid sequence, or a composition comprising the CHEPO polypeptide, is hereby elected, with traverse. Of the CHEPO variants listed in claims 34 and 35, applicants select the amino acid sequence of (1) of claim 34 (SEQ ID NO: 18).

It is believed that the requirement to restrict the application to one of the CHEPO variants listed in claims 34 and 35 lacks solid legal foundation. The CHEPO variants of claims 34 and 35 have a high degree of sequence identity with each other and with the CHEPO polypeptide of SEQ ID NO: 2. They are all classified in the same classes and subclasses. Indeed, the specific variants listed in claims 34 and 35 differ from the CHEPO polypeptide of SEQ ID NO: 2 by mutations at certain glycosylation sites of the native CHEPO molecule, i.e. are glycosylation variants. As a result, all variants listed in claims 34 and 35 are closely related to the CHEPO polypeptide of SEQ ID NO: 2, and should be examined in the same application. Moreover, even if the selection of a specific sequence were required in order to facilitate examination, this should be raised as an election of species requirement which would allow applicants to recapture a reasonable number of the remaining variants in the same application, if a generic claim is found allowable. Accordingly, the Examiner is respectfully requested to modify the restriction requirement by withdrawing the requirement to select one of the sequences listed in claims 34 and 35 or, as a minimum, rephrase it an election of species requirement.

It is emphasized that the selection of the CHEPO variant of SEQ ID NO: 18 is in addition to the selection of the CHEPO polypeptide of SEQ ID NO: 2, to which most of the claim are directed. Accordingly, even if the present restriction requirement is upheld in its entirety, CHEPO polypeptides of SEQ ID NO: 2 and their variants specified in claims 16-24 should be examined in the present application along with the specific variant of SEQ ID NO: 18.

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Although no fees are believed to be due at this time, please charge any fees, including any fees for extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: Ginger R. Dreger

Ginger R. Dreger

Registration No. 33,055

Attorney of Record

Customer No. 20,995

(415) 954-4114

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